MISSISSIPPI LEGISLATURE

By: Representatives Massengill, Bain, Barker, Barton, Bell, Evans (43rd), Hood, Jennings, Ladner, Lamar, Miles, Nelson, Oberhousen, Rogers (14th), Staples, Steverson, Sullivan, White To: Insurance

HOUSE BILL NO. 885 (As Sent to Governor)

1 AN ACT TO REQUIRE HEALTH INSURANCE POLICIES TO PROVIDE 2 COVERAGE FOR AUTISM-RELATED TREATMENT; TO PROVIDE FOR THE 3 LICENSURE AND REGULATION OF THE PRACTICE OF APPLIED BEHAVIOR 4 ANALYSIS; AND FOR RELATED PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI: 6 SECTION 1. (1) Except as otherwise provided herein, a 7 health insurance policy shall provide coverage for the screening, diagnosis, and treatment of autism spectrum disorder. To the 8 9 extent that the screening, diagnosis, and treatment of autism 10 spectrum disorder are not already covered by a health insurance policy, coverage under this section will be included in health 11 12 insurance policies that are delivered, executed, issued, amended, 13 adjusted, or renewed in this state, or outside this state if 14 insuring residents of this state, on or after January 1, 2016. No insurer can terminate coverage, or refuse to deliver, execute, 15 16 issue, amend, adjust, or renew coverage to an individual solely 17 because the individual is diagnosed with or has received treatment 18 for an autism spectrum disorder.

(2) Coverage under this section must not be subject to dollar limits, deductibles, or coinsurance provisions that are less favorable to an insured than the dollar limits, deductibles, or coinsurance provisions that apply to substantially all medical and surgical benefits under the health insurance policy, except as otherwise provided in subsection (5) of this section.

(3) This section shall not be construed as limiting benefits
that are otherwise available to an individual under a health
insurance policy.

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(4) As used in this section:

(a) "Applied behavior analysis" means the
individualized design, implementation, and evaluation of
instructional and environmental modifications to produce socially
significant improvement in human behavior, including the use of
direct observation, measurement, and functional analysis of the
relationship between environment and behavior.

35 (b) "Autism spectrum disorder" means any of the 36 pervasive developmental disorders or autism spectrum disorders as 37 defined by the most recent edition of the Diagnostic and 38 Statistical Manual of Mental Disorders (DSM) or the edition that 39 was in effect at the time of diagnosis.

40 (c) "Behavioral health treatment" means behavior
41 modification and mental health counseling and treatment programs,
42 including applied behavior analysis, that are:

H. B. No. 885 **~ OFFICIAL ~** 15/HR26/R1138SG PAGE 2 (CAA\KW) 43 (i) Necessary to develop or restore, to the44 maximum extent practicable, the functioning of an individual; and

(ii) Provided or supervised by a licensed behavior mental health professional, so long as the services performed are commensurate with the licensed mental health professional's competency area, training and supervised experience.

(d) "Diagnosis of autism spectrum disorder" means
medically necessary assessment, evaluations, or tests to diagnose
whether an individual has an autism spectrum disorder, as
performed by a licensed psychologist or licensed physician.

(e) "Licensed behavior analyst" means a professional
licensed under Section 8(d) of this act to practice applied
behavior analysis in the State of Mississippi.

56 "Health insurance policy" includes all individual (f) and group health insurance policies providing coverage on an 57 58 expense-incurred basis, individual and group service or indemnity 59 type contracts issued by a nonprofit corporation, individual and group service contracts issued by a health maintenance 60 61 organization or preferred provider organization, all self-insured 62 group arrangements to the extent not preempted by federal law, all 63 plans for state and political subdivisions and all managed health 64 care delivery entities of any type or description providing coverage to any resident of this state. 65

(g) "Pharmacy care" means medications approved by the
United States Food and Drug Administration and prescribed by a

H. B. No. 885 **~ OFFICIAL ~** 15/HR26/R1138SG PAGE 3 (CAA\KW) 68 licensed physician, and any health-related services deemed 69 medically necessary to determine the need or effectiveness of the 70 medications.

(h) "Psychiatric care" means direct or consultative services provided by a psychiatrist licensed to practice in the State of Mississippi or as provided under the applicable health insurance policy.

(i) "Psychological care" means direct or consultative services provided by a psychologist licensed to practice in the State of Mississippi or as provided under the applicable health insurance policy.

(j) "Therapeutic care" means services provided by licensed speech-language pathologists, occupational therapists, or physical therapists as covered by the health insurance policy.

(k) "Treatment for autism spectrum disorder" means
evidence-based care prescribed or ordered for an individual
diagnosed with an autism spectrum disorder by a licensed physician
or a licensed psychologist who determines the care to be medically
necessary, including, but not limited to:

87	(i)	Behavioral health treatment;
88	(ii)	Pharmacy care;
89	(iii)	Psychiatric care;
90	(iv)	Psychological care; and
91	(v) [Therapeutic care.

H. B. No. 885 **~ OFFICIAL ~** 15/HR26/R1138SG PAGE 4 (CAA\KW) 92 (1) "Treatment plan" means a written, comprehensive, 93 and individualized intervention plan that incorporates specific 94 treatment goals, individualized with objectives, data collection 95 and analysis plan, and goal change procedures if goals are not 96 met.

97 (5) Coverage under this section for applied behavior analysis shall be limited to twenty-five (25) hours per week, and 98 99 shall not be required beyond the age of eight (8) years. No more 100 than ten (10) hours per week shall be for the services of a licensed behavior analyst; however, all services must be provided 101 102 under the supervision or direction of a licensed behavior analyst 103 or licensed psychologist. Coverage for applied behavior analysis 104 pursuant to an ongoing treatment plan may be extended beyond the 105 limits provided in this subsection if medical necessity for the extension is determined to exist, or in the event of disagreement, 106 107 the appeal rights under the applicable health insurance policy 108 shall govern.

(6) Except for inpatient services, if an insured is receiving treatment for an autism spectrum disorder, an insurer shall have the right to review the treatment plan every six (6) months, unless the insurer and the insured's treating physician or psychologist agree that a more frequent review is necessary. The cost of obtaining any review of the treatment plan shall be borne by the insurer.

H. B. No. 885 15/HR26/R1138SG PAGE 5 (CAA\KW) 116 (7)This section shall not be construed to require an 117 insurer to provide coverage for any services to an individual under an individualized family service plan, an individualized 118 education program, or an individualized service plan, required by 119 120 federal or state law to be performed by public schools, including, 121 but not limited to, individualized education programs, special 122 education services, Individuals with Disabilities Education 123 Improvement Act programs, attention deficit-hyperactivity disorder 124 classrooms, or autism spectrum disorder classrooms.

(8) Nothing in this section shall apply to nongrandfathered plans in the individual and small group markets that are required to include essential health benefits under the Patient Protection and Affordable Care Act or to Medicare supplement, accident-only, specified disease, hospital indemnity, disability income, long-term care, or other limited benefit hospital insurance policies.

(9) A small employer with one hundred (100) or fewer
eligible employees <u>that provides or offers a health insurance</u>
<u>policy to its employees</u> will offer coverage for the screening,
diagnosis and treatment of autism spectrum disorder as provided in
this section. The small employer may charge the plan participant
with the cost of obtaining the additional coverage.

(10) In the event that any part of this legislation is rendered or declared invalid or unenforceable by a court of competent jurisdiction, such invalidation shall not invalidate the

141 remaining portions thereof, and they shall remain in full force 142 and effect.

143 <u>SECTION 2.</u> License required. In order to safeguard life, 144 health and property, no person shall practice applied behavior 145 analysis in this state, or use the title "Licensed Behavior 146 Analyst" or "Licensed Assistant Behavior Analyst," unless such 147 person has secured a license under this chapter.

148SECTION 3. Definitions. The following definitions apply as149used in this chapter, unless the context otherwise requires:

(a) "Board" means the Mississippi Autism Board.

(b) "Person" means any individual, organization or corporate body, except that only an individual may be licensed under this chapter.

154 "Practice of applied behavior analysis" means (C) 155 interventions based on scientific research and the direct 156 observation and measurement of behavior and the environment. 157 Behavior analysts utilize contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other 158 159 consequences to help people develop new behaviors, increase or 160 decrease existing behaviors, and emit behaviors under specific 161 environmental conditions. The practice of behavior analysis 162 expressly excludes psychological testing, diagnosis of a mental or physical disorder, neuropsychology, psychotherapy, cognitive 163 164 therapy, sex therapy, psychoanalysis, hypnotherapy, and long-term 165 counseling as treatment modalities.

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(d) "Licensed behavior analyst" means an individual
currently certified by the Behavior Analyst Certification Board as
a Board Certified Behavior Analyst (BCBA) or Board Certified
Behavior Analyst-Doctoral (BCBA-D) and licensed under Section 8(d)
of this act to practice applied behavior analysis.

(e) "Licensed assistant behavior analyst" means an
individual currently certified by the Behavior Analyst
Certification Board as a Board Certified Assistant Behavior
Analyst (BCABA) and licensed pursuant to Section 8(e) of this act
to practice applied behavior analysis under the supervision of a
licensed behavior analyst.

(f) "Behavior technician" means an individual currently certified by the Behavior Analyst Certification Board as a Registered Behavior Technician (RBT) to provide applied behavior analysis treatments under the supervision and direction of a licensed behavior analyst or licensed assistant behavior analyst.

182 <u>SECTION 4.</u> Scope of chapter. (1) Nothing in this chapter 183 shall be construed as preventing or restricting the practice of 184 any of the following:

185 (a) A licensed psychologist, subject to any rules or186 regulations of the Mississippi Board of Psychology;

(b) Other licensed health care professionals authorized
to practice in the state, so long as the services of the
professional are commensurate with the professional's demonstrated

H. B. No. 885 **~ OFFICIAL ~** 15/HR26/R1138SG PAGE 8 (CAA\KW) 190 competence and training and within the scope of practice regulated 191 by the professional's licensing authority;

(c) A behavior technician who implements certain
applied behavior analysis procedures under the extended authority
and direction of a licensed behavior analyst or licensed assistant
behavior analyst, provided that the behavior technician is
supervised in accordance with the Behavior Analyst Certification
Board's supervision standards;

(d) A family member or guardian of a recipient of
applied behavior analysis services who implements certain applied
behavior analysis procedures in compliance with the training and
direction of a licensed behavior analyst or licensed psychologist;

202 (e) A behavior analyst who practices with nonhumans,
203 including applied animal behaviorists and animal trainers;

204 (f) An individual who is pursuing supervised 205 experiential training to meet eligibility requirements for 206 Behavior Analyst Certification Board certification, provided that 207 such training is supervised by a licensed behavior analyst and who 208 meet Behavior Analyst Certification Board supervisor requirements, 209 and that the supervised experience is conducted in accordance with 210 other Behavior Analyst Certification Board standards and 211 requirements;

(g) An individual who teaches behavior analysis orconducts behavior analytic research, provided that such teaching

H. B. No. 885 **~ OFFICIAL ~** 15/HR26/R1138SG PAGE 9 (CAA\KW) 214 or research does not involve the delivery of direct behavior 215 analytic services;

(h) A professional behavior analyst who provides general behavior analytic services to organizations, so long as those services are for the benefit of the organizations and do not involve direct services to individuals;

220 A matriculated college or university student whose (i) 221 applied behavior analysis activities are part of a defined course, 222 internship, practicum, or program of study and are supervised by a 223 licensed behavior analyst or an instructor in a Behavior Analyst 224 Certification Board-approved course sequence or practicum. 225 Students and interns must not represent themselves as professional 226 behavior analysts but must use titles that clearly indicate their 227 trainee status, such as "student," "intern," or "trainee"; and

Individuals employed by a school board while 228 (ij) 229 performing the regular duties of their office or position. Such 230 individuals shall not represent themselves as professional 231 behavior analysts unless they are licensed behavior analysts or 232 licensed assistant behavior analysts, and shall not offer behavior 233 analytic services to any persons or entities other than their 234 school employer or accept remuneration for providing behavior 235 analytic services other than the remuneration they receive from 236 their school employer.

(2) Subsection (1) of this section shall not be interpretedto expand the scope of practice of any licensed professional who

H. B. No. 885 **~ OFFICIAL ~** 15/HR26/R1138SG PAGE 10 (CAA\KW) is not licensed pursuant to this chapter; no individual described in subsection (1) may provide applied behavior analysis treatment outside the scope of their licensed practice.

242 SECTION 5. Mississippi Autism Board; membership; term of 243 office; appointment; qualifications. (1) The board shall consist 244 of five (5) members. The Governor shall appoint one (1) licensed 245 psychologist practicing in the area of applied behavior analysis, 246 one (1) licensed behavior analyst, and one (1) public member who 247 is not licensed in behavior analysis and who is the family member 248 of a recipient of applied behavior analysis services. The 249 Lieutenant Governor shall appoint two (2) licensed behavior 250 analysts.

(2) The licensed psychologist member shall serve an initial term of one (1) year, the licensed behavior analyst appointed by the Governor shall serve an initial term of two (2) years, the public member shall serve an initial term of three (3) years, and the two (2) licensed behavior analysts appointed by the Lieutenant Governor shall serve initial terms of four (4) years. All subsequent appointees shall serve four-year terms.

(3) All appointees shall serve at the will and pleasure ofthe appointing official.

(4) Each board member shall serve without compensation, but
 shall receive actual traveling and incidental expenses necessarily
 incurred while engaged in the discharge of official duties.

15/HR26/R1138SG PAGE 11 (CAA\KW) 263 SECTION 6. Authority of the board. (1) The board shall 264 annually elect from its membership a chairman and executive 265 secretary at a meeting held during the last two (2) guarters of 266 the fiscal year. The board shall meet at any other times as it 267 deems necessary or advisable. Reasonable notice of all meetings 268 shall be given in the manner prescribed by the board and in 269 accordance with state law. The presence of three (3) members 270 shall constitute a quorum.

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(2) The board is authorized and empowered to:

(a) Investigate and evaluate each and every applicantapplying for a license to practice applied behavior analysis;

(b) Issue subpoenas, examine witnesses and administer
oaths, and shall, at its discretion, investigate allegations or
practices violating the provisions of this chapter; and

(c) Adopt and, from time to time, revise any rules and
regulations not inconsistent with, and as may be necessary to
carry into effect, the provisions of this chapter.

280 <u>SECTION 7.</u> Financing administration of provisions. (1) The 281 administration of the provisions of this chapter shall be financed 282 from income accruing from fees, licenses and other charges 283 assessed and collected by the board and from such other funds 284 available to the board.

(2) The board shall receive and account for all funds
received and shall keep such funds in a separate fund. Funds
collected under the provisions of this chapter shall be used

H. B. No. 885 **~ OFFICIAL ~** 15/HR26/R1138SG PAGE 12 (CAA\KW) solely for the expenses of the board and to administer the provisions of this chapter, which may include full or partial financing of continuing education programs promulgated by the board under this chapter. Such funds shall be subject to audit by the Auditor of the State of Mississippi.

(3) The board shall be assigned to the Office of theSecretary of State for administrative and ministerial purposes.

295 <u>SECTION 8.</u> Eligibility for license. To be eligible for 296 licensure by the board as a behavior analyst or assistant behavior 297 analyst, a person shall:

(a) Submit to the board an application, upon such form
and in such manner as the board shall prescribe, along with the
applicable fee and personal references;

301 (b) Certify that the applicant has not been convicted302 of a felony as defined by the laws of the State of Mississippi;

303 (C) Undergo a fingerprint-based criminal history 304 records check of the Mississippi central criminal database and the 305 Federal Bureau of Investigation criminal history database. Each 306 applicant shall submit a full set of the applicant's fingerprints 307 in a form and manner prescribed by the board, which shall be 308 forwarded to the Mississippi Department of Public Safety and the 309 Federal Bureau of Investigation Identification Division for this 310 purpose; and

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(d) For a behavior analyst:

H. B. No. 885 15/HR26/R1138SG PAGE 13 (CAA\KW) (i) Possess at least a master's degree, or its equivalent, from an educational institution recognized by the board;

(ii) Have current and active certification by the Behavior Analyst Certification Board as a Board Certified Behavior Analyst (BCBA) or Board Certified Behavior Analyst-Doctoral (BCBA-D), verified by the board; and

319 (iii) Comply with such other requirements of the320 board.

(e) For an assistant behavior analyst:
(i) Possess a bachelor's degree, or its
equivalent, from an educational institution recognized by the
board;

(ii) Have current and active certification by the
Behavior Analyst Certification Board as a Board Certified
Assistant Behavior Analyst (BCABA), verified by the board; and
(iii) Provide proof of ongoing supervision by a

329 licensed behavior analyst.

(f) All licenses issued pursuant to this section shall be for a term of three (3) years, but shall not exceed the expiration of the licensee's certification by the Behavior Analyst Certification Board.

334 <u>SECTION 9.</u> Waiver of eligibility requirements. The board 335 may waive the examination for licensure of any applicant who 336 presents proof of current licensure in another state, including

H. B. No. 885 **~ OFFICIAL ~** 15/HR26/R1138SG PAGE 14 (CAA\KW) the District of Columbia, or territory of the United States which maintains professional standards considered by the board to be equivalent to those set forth in this chapter. The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

342 <u>SECTION 10.</u> Temporary licenses. The board shall draft rules 343 and regulations for the granting and renewal of temporary licenses 344 for applicants who have met all eligibility requirements for 345 certification by the Behavior Analyst Certification Board, have 346 taken a certification examination, and are awaiting results of the 347 examination, but otherwise meet the requirements of this chapter.

348 <u>SECTION 11.</u> License denial, suspension, or revocation. (1) 349 The board, by an affirmative vote of at least three (3) of its 350 five (5) members, shall withhold, deny, revoke or suspend any 351 license issued or applied for in accordance with the provisions of 352 this chapter, or otherwise discipline a licensed behavior analyst 353 or licensed assistant behavior analyst upon finding that the 354 applicant or licensee:

(a) Has violated the current Behavior Analyst
Certification Board Professional Disciplinary and Ethical
Standards, the Behavior Analyst Certification Board Guidelines for
Responsible Conduct for Behavior Analysts, or other codes of
ethical standards adopted by the board, or has lost or failed to
renew certification by the Behavior Analyst Certification Board;
or

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H. B. No. 885 15/HR26/R1138SG PAGE 15 (CAA\KW) 362 (b) Has been convicted of a felony or any offense 363 involving moral turpitude, the record of conviction being 364 conclusive evidence thereof; or

365 (c) Is using any narcotic or any alcoholic beverage to 366 an extent or in a manner dangerous to any other person or the 367 public, or to an extent that such use impairs his ability to 368 perform the work of a licensed behavior analyst or licensed 369 assistant behavior analyst; or

370 (d) Has impersonated another person holding a license
371 issued under this chapter or allowed another person to use his
372 license; or

373 (e) Has used fraud or deception in applying for a374 license provided for in this chapter; or

375 (f) Has accepted commissions or rebates or other forms 376 of remuneration for referring clients to other professional 377 persons; or

(g) Has allowed his name or license issued under this chapter to be used in connection with any person or persons who perform applied behavior analysis services outside the area of their training, experience or competence; or

(h) Is legally adjudicated mentally incompetent, the
record of such adjudication being conclusive evidence thereof; or
(i) Has willfully or negligently violated any of the
provisions of this chapter.

386 (2) The board may recover from any person disciplined under
387 this chapter the costs of investigation, prosecution, and
388 adjudication of the disciplinary action.

389 Notice shall be effected by registered mail or personal (3)390 service setting forth the particular reasons for the proposed 391 action and fixing a date not less than thirty (30) days nor more 392 than sixty (60) days from the date of such mailing or such 393 service, at which time the applicant or licensee shall be given an 394 opportunity for a prompt and fair hearing. For the purpose of 395 such hearing the board, acting by and through its executive 396 secretary, may exercise all authority granted to conduct 397 investigations and hearings pursuant to Section 6(2)(a) and (b) of 398 this act. At such hearing the applicant or licensee may appear by 399 counsel and personally on his own behalf. On the basis of any 400 such hearing, or upon default of applicant or licensee, the board 401 shall make a determination specifying its findings of fact and 402 conclusions of law. A copy of such determination shall be sent by 403 registered mail or served personally upon the applicant or 404 licensee. The decision of the board denying, revoking or 405 suspending the license shall become final thirty (30) days after 406 so mailed or served unless within that period the licensee appeals 407 the decision to the Chancery Court of Madison or Rankin Counties, 408 pursuant to the provisions hereof, and the proceedings in chancery 409 shall be conducted as other matters coming before the court. All proceedings and evidence, together with exhibits, presented at 410

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411 such hearing before the board in the event of appeal, shall be 412 admissible in evidence in the court.

(4) Nothing in this subsection shall be interpreted to prohibit the board from immediately suspending any license prior to a hearing under subsection (3) of this section, when in its sole discretion the suspension is required for the instruction, safety or well-being of any member of the public.

(5) Every order and judgment of the board shall take effect immediately upon its promulgation unless the board in such order or judgment fixes a probationary period for applicant or licensee. Such order and judgment shall continue in effect unless upon appeal the court by proper order or decree terminates it earlier. The board may make public its order and judgments in such manner and form as it deems proper.

(6) Suspension by the board of a license issued under this chapter shall be for a period not to exceed one (1) year. At the end of this period the board shall reevaluate the suspension, and shall either reinstate or revoke the license. A person whose license has been revoked under the provisions of this section may reapply for license after more than two (2) years have elapsed from the date such revocation is legally effective.

432 (7) In addition to the reasons specified in subsection (1)
433 of this section, the board shall be authorized to suspend the
434 license of any licensee for being out of compliance with an order

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435 for support, in compliance with the procedures set forth in 436 Sections 93-11-151 through 93-11-163.

437 <u>SECTION 12.</u> Procedure and fees for renewal. (1) Except as 438 provided in Section 33-1-39, every applicant for license or 439 renewal pursuant to this chapter shall pay to the board a fee 440 determined by the board, but not to exceed:

(a) Two Hundred Fifty Dollars (\$250.00), in addition to
the cost of obtaining the criminal history record, for behavior
analysts; and

(b) One Hundred Dollars (\$100.00), in addition to the
cost of obtaining the criminal history record, for assistant
behavior analysts.

447 (2)Individuals licensed pursuant to this chapter shall 448 apply for renewal every three (3) years, or upon renewal of certification by the Behavior Analyst Certification Board, have 449 450 current certification by the Behavior Analyst Certification Board 451 verified by the board, and present evidence of the satisfactory 452 completion of continuing education requirements as determined by 453 the board. The board shall issue a renewal of the license for a 454 term of three (3) years to any licensee complying with the 455 requirements of this section.

(3) A lapsed license under this chapter may be renewed within a period of two (2) years after the lapse, upon payment of all fees in arrears and verification by the board that the applicant is currently certified by the Behavior Analyst

460 Certification Board. An individual wishing to renew a license 461 that has been lapsed for more than two (2) years shall be required 462 to reapply for licensure.

463 <u>SECTION 13.</u> Duty to register behavior technicians. Licensed 464 behavior analysts and licensed assistant behavior analysts must 465 register with the board all behavior technicians providing 466 services under their supervision. The licensed behavior analyst 467 or licensed assistant behavior analyst shall update the board of 468 the termination of supervision as required by the board.

469 <u>SECTION 14.</u> Offenses and penalties. Any person who violates 470 any provision of this chapter shall, upon conviction, be guilty of 471 a misdemeanor and shall be punished by a fine of not more than One 472 Thousand Dollars (\$1,000.00) or imprisoned in the county jail for 473 a period not exceeding six (6) months, or both.

474 <u>SECTION 15.</u> Fees deposited in special fund. All fees 475 collected by the board under this chapter and any penalties 476 collected by the board for violations of this chapter shall be 477 deposited in a special fund hereby created in the State Treasury 478 and shall be used for the implementation and administration of 479 this chapter when appropriated by the Legislature for such 480 purpose.

481 SECTION 16. Section 1 of this act shall be codified as a new 482 section in Chapter 9, Title 83, Mississippi Code of 1972. 483 Sections 2 through 15 of this act shall be codified as a new 484 chapter in Title 73, Mississippi Code of 1972.

H. B. No. 885 **~ OFFICIAL ~** 15/HR26/R1138SG PAGE 20 (CAA\KW) 485 **SECTION 17.** This act shall take effect and be in force from 486 and after July 1, 2015.

H. B. No. 885 15/HR26/R1138SG PAGE 21 (CAA\KW) ST: Autism; require insurance coverage for and regulate practice of applied behavior analysis.